

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

In The Matter of)	
)	
)	Docket Nos. OST-97-2881
)	OST-97-3014
)	OST-98-4775
Computer Reservations)	OST-99-5888
System (CRS) Regulations;)	
Statements of General Policy)	

**COMMENTS OF
AMERICAN EXPRESS TRAVEL
RELATED SERVICES COMPANY, INC.**

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March 17, 2003

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RELATED SERVICES COMPANY, INC.**

American Express Travel Related Services Company, Inc. ("American Express") hereby provides comments on the Department's Notice of Proposed Rulemaking ("NPRM") wherein the Department proposes modifications to the CRS Rules, 14 CFR 255 (the "Rules").

We agree that the airlines' divestitures of the CRSs and advances in Internet technology have rendered the current CRS Rules largely moot. We also agree that the current Rules may actually impede competition and innovation in the travel distribution arena. We do not, however, agree with the approach the DOT has taken in this NPRM. The Department proposes to regulate some systems but not others and we fear this piecemeal approach is a recipe for disaster. It is American Express' strongly held view that the Department should regulate all systems equally or regulate none at all.

We have long encouraged the Department to modify the Rules to keep pace with our evolving industry. We have watched with alarm as the airlines have sold off their highly regulated proprietary reservation systems and replaced them with 21st century technology free of regulation. We have urged the Department repeatedly to extend the Rules to Orbitz, and any other multiple airline owned web site that reflects the modern day version of the airline owned CRS, to ensure fair competition in both the airline and travel distribution industries. We are disappointed that the Department has declined to do so in this NPRM. Yet, if the Department chooses not to regulate all airline owned systems, then it should deregulate travel distribution systems entirely to allow full and unfettered competition.

An example of the danger of piecemeal regulation is the proposed change to Section 255.6 (e). The NPRM proposes to prohibit traditional CRSs from using contract language that requires airlines to give the CRS full access to fares. Yet this is exactly what Orbitz does now in its airline contracts. This regulation would give Orbitz a competitive edge in the marketplace, which would be damaging not only to CRSs but also to travel agents and their customers. If the traditional CRSs do not survive, then Orbitz will have a monopoly on integrated airline distribution, which is in no one's best interest. CRSs provide consumers, through their travel agents (both online and traditional), access to information about fares and inventory. For the sake of the consumer, anyone negotiating with the airlines should be allowed to try to make this access as complete as possible.

An additional danger of the proposed rules is the extension of the rules to non-airline owned CRS systems. The CRS Rules were originally enacted to prevent abuses

by airlines that owned the systems. It was the inherent conflict of interest posed by this relationship that necessitated the Rules. We are not convinced it is necessary to extend these Rules to any systems where this conflict of interest does not exist. Our real concern however, is that the definition of a “System” does not inadvertently stifle innovation and the development of new distribution technology. In particular, technology that directly connects travel agents to airlines, as well as any proprietary software a travel agent uses internally for distribution of air tickets, should be expressly exempted from the definition. We believe this is the Department’s intent and would ask, to the extent these Rules continue, that you add an express exemption to ensure agents have the freedom to explore alternatives distribution methods without fear of being inadvertently ensnared in regulation.

Marketing and Booking Data

One area of the NPRM we wholeheartedly applaud, and the only regulation we encourage you to keep and indeed expand, is the proposed Section 255.9. In this age of a heightened sensitivity to security and privacy issues we ask that the Department expand this rule to protect consumers in the following additional ways:

- (a) All systems should be prohibited from including personally identifiable information about travelers (name, address, place of work, account numbers) in MIDT. This change would bring the regulation into closer conformity with other laws designed to protect consumers’ privacy such as the Gramm Leach Bliley Act and EU privacy laws.
- (b) Airlines should be prohibited from requiring, as a condition of corporate discount agreements, that corporate customers send the airline, or their data consolidating agents, all of their travel data including detailed data on other airlines. Our corporate customers are routinely being forced to disclose travel data they are not comfortable disclosing, data that may violate their contracts with other airlines, and data that arguably violates antitrust laws. Airlines are recreating MIDT outside the CRSs and the DOT should take the opportunity to close this loophole by making the following language change to the

proposed 255.9 (d) and (e): “no system may sell, and no carrier may buy or obtain, directly or indirectly, any marketing, booking or sales data relating to carriers [delete “generated by a system”] insofar as the data include ...”

Fare Advertising

We want to make one further comment to the NPRM. In accordance with your Notice of Proposed Rulemaking, Correction filed March 13, 2003, you are asking for comment on whether travel agent fees below \$20 or 10% of the price may be stated separately while fees above that amount should be included in the fare amount.

American Express believes all agency fees should be stated separately and that requiring the fee to be included in the airfare sometimes but not others would be confusing to consumers. It would also be misleading and prevent consumers from making an informed decision. Consumers would not be able to determine the true price being charged by the airline or the true price being charged by the travel agent and therefore would not be able to evaluate whether either the airline or the travel agent is providing a good value. Accordingly, we recommend the second half of proposed rule 399.84 (b) be struck in its entirety.

Indeed, Section 399.84 does not recognize that the travel agency industry has evolved dramatically from the time the Rule was originally drafted. Travel agents are no longer mere ticket issuers whose compensation is included in the ticket price. Airlines no longer pay travel agents base commissions and it is standard industry practice for customers to pay travel agents service fees. Travel agents now provide a wide range of services from consulting on destinations and suppliers, creation of complex itineraries, emergency travel services and more. Agents charge a wide range of fees for different services and often charge a single fee for multiple services or services over time. How is

an agent to break up its service fee for a complex itinerary on a leg-by-leg basis and total it into each segment of the trip? Doing so would be artificial if not impossible.

Therefore, we urge the Department to replace the entire proposed 399.84 (b) with a simple requirement that to the extent a travel agent charges fees, the fees must be clearly and conspicuously disclosed in a prominent manner prior to the services being rendered. In the alternative, we ask the Department to allow the proposed 399.84 (b) to be deemed satisfied if an agent has its customers sign a fee agreement prior to provision of the services. Both of these would allow agents the freedom to disclose fees in a manner that best ensures consumers are fully apprised of their fees. Specifying a single type of disclosure, however, is inflexible, and may result in misleading advertising and consumer confusion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "P. Arway", written in a cursive style.

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